

General Information Letter: The expansion of the net operating loss carryback period from two years to five years in the Job Creation and Worker Protection Act of 2002 applies to individuals but not to other Illinois taxpayers.

May 21, 2002

Dear:

This is in response to your letter dated May 16, 2002, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

In your letter you have stated the following:

We are requesting the status of the Illinois legislature in regards to the above referenced federal legislation. Specifically, the net operating loss carry back to the earliest of 5 years for federal business returns as compared to the present 2-year carry back adjustment for the State of Illinois.

We are in the process of filing a current year net operating loss first to the earliest of five years preceding the loss year for federal income tax purposes. Do we also carry the loss back 5 years for Illinois.

### **Response**

Under Section 203 of the Illinois Income Tax Act (35 ILCS 5/203), the computation of net income subject to tax begins with the taxpayer's federal taxable income (or, in the case of individuals, adjusted gross income). Specific addition and subtraction modifications are then made, and the resulting "base income" is then allocated or apportioned to Illinois. Under Section 203(h) of the Illinois Income Tax Act, no modifications may be made unless expressly provided in Section 203.

With respect to net operating loss carrybacks, individuals are entitled to the net operating loss deductions allowed for federal income tax purposes because there is no provision in Section 203 that requires them to add back the deduction. This is in contrast to the provisions in Section 203 that do require all other taxpayers to add back any federal net operating loss deductions they have taken. For non-individuals, Section 207 of the Illinois Income Tax Act (35 ILCS 5/207) then provides for a separate computation and carryover of Illinois net losses, and prescribes a carryback period of 2 years.

The 5-year carryback period created in the federal Act would therefore automatically apply to individuals, but would not apply to other taxpayers.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual

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situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton

Deputy General Counsel -- Income Tax